

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Petition For Rulemaking To Determine  
The Terms and Conditions Under Which  
Tier 1 LECs Should Be Permitted To  
Provide InterLATA Telecommunications  
Services

RM-8303

**COMMENTS OF THE  
INDEPENDENT DATA COMMUNICATIONS  
MANUFACTURERS ASSOCIATION, INC.**

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), by its attorneys, hereby comments in response to the above-referenced petition for rulemaking filed by five regional Bell companies on July 15, 1993 ("Petition").

**I. DISCUSSION**

IDCMA strongly supports greater competition in the interexchange services market. IDCMA would thus not oppose entry by a Bell Operating Company ("BOC") into interexchange services, if "there is no substantial possibility that it could use its monopoly power to impede competition" in that market or any other market.<sup>1</sup> For this condition precedent to obtain, there must be more effective competition at the local exchange level,<sup>2</sup> as

1/ See United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 231 (D.D.C. 1982).

2/ The BOCs' analysis of local exchange competition is flawed in at least three respects. First, it emphasizes competition from cellular and personal communications services ("PCS"). The BOCs as a group, however, dominate the cellular industry. PCS has not yet been implemented, and important questions remain about how and by (Footnote 2 continued on next page.)

well as additional and effective regulatory safeguards. In general, therefore, IDCMA believes that the rulemaking sought by the BOCs is premature and ill-founded. It is by no means a foregone conclusion that the BOCs will be allowed into interexchange services in the foreseeable future, either by act of Congress or by a court decision. The terms and conditions for such entry, if permitted, could vary over a wide range.

Contrary to the BOCs' position, moreover, it seems likely that, whatever the terms for BOC entry into interexchange services, the nonstructural safeguards already set in place by the Commission for other activities will not be sufficient to handle problems of cross-subsidy, discrimination, and other forms of anticompetitive conduct. There are a number of problems which should be addressed at present, whether or not the Commission moves toward adopting new rules for BOC provision of interexchange services.

As an association of manufacturers of customer-premises equipment ("CPE"), IDCMA is particularly concerned about the ramifications of BOC provision of interexchange services for the CPE industry. IDCMA's experience is that the bundling of unregulated CPE and regulated communications services continues to be a problem involving several BOCS and certain interexchange carriers, despite the thirteen-year presence of the

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whom these new services will be provided. Second, the Petition overstates competition from competing access providers which, despite their presence in many urban areas, still handle only a tiny fraction of local and interexchange access traffic. Third, the recent judicial decision invalidating the telephone-cable cross-ownership restriction, which was issued after the Petition was filed, undercuts any notion of "protected competition" from cable service providers, which have only recently become involved in common carrier services. See Chesapeake & Potomac Tel. Co. v. United States, Civ. No. 92-1751-A, slip op. (E.D. Va. Aug. 24, 1993).

CPE unbundling rule. In recent months, IDCMA has been engaged in proceedings challenging the bundled service-CPE offerings of two of the petitioners, BellSouth and NYNEX.<sup>3</sup>

Mention of the CPE unbundling rule in the Petition is conspicuous in its absence. Provision of "end-to-end" service by the BOCs, however, which is essentially the joint marketing of interexchange service, interexchange access service, and CPE,<sup>4</sup> raises the twin spectres of increased opportunity and greater incentive to engage in unlawful bundling. Reaffirmation of the CPE unbundling rule is thus a necessary ingredient in any new regulatory regime for BOC provision of interexchange services. Additional safeguards, such as structural separation requirements, would enhance the ability of the Commission to ensure unbundling and to protect against cross-subsidy and discrimination.<sup>5</sup>

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3/ BellSouth Telecommunications Revisions to Tariff F.C.C. No. 1, 7 FCC Rcd. 5504 (Com. Car. Bur. 1992) and BellSouth Telephone Cos. Revisions to Tariff F.C.C. No. 4, 7 FCC Rcd. 596 (Com. Car. Bur. 1992); NYNEX Telephone Cos., 8 FCC Rcd. 693 (Com. Car. Bur. 1993), review pending.

4/ See Petition at 24.

5/ The BOCs point to price cap regulation and accounting separations as sufficient protection against cross-subsidization of interexchange services by their monopoly local exchange revenues. Id. at 34-37. These arguments are unpersuasive. First of all, the bulk of the BOCs' revenues originate from intrastate services outside the Commission's jurisdiction. The efficacy of state regulation varies widely, and the BOCs are adept at cross-jurisdictional manipulations to position costs and revenues where there is the least amount of regulatory scrutiny.

Secondly, federal price cap regulation is premised on outside indices of price levels, not simply cost factors. The steep decline in underlying costs for the provision of local exchange access services resulting from the transition from copper to fiber transmission and from ever more efficient switching technologies will likely result in excess revenues which can be used to cross-subsidize interexchange ventures, with the costs allocated to these new services sufficiently understated in the BOCs' tariff filings. Thus, even though the BOCs may not be able to gain an immediate increase in their overall earnings levels through cross-subsidization, they would be able to (Footnote 5 continued on next page.)

The Petition mentions the Commission's program to develop "expanded interconnection" to the local exchange only in the context of industry changes which the BOCs believe support removal of the interexchange service prohibition. With the limited exception of NYNEX on the issue of physical collocation, these same BOCs have opposed meaningful expanded interconnection opportunities for competing access providers and end-users. They have opposed IDCMA's proposal to extend the direct benefits of collocation to end-users by removing the requirement that users provide their own transmission facilities in order to obtain expanded interconnection rights.<sup>6</sup> Nondiscriminatory provision of collocation opportunities along the lines of IDCMA's proposal would be beneficial in any case, but would be especially appropriate if the BOCs' entry into interexchange services is permitted. Users should be given the opportunity to create their own alternatives for end-to-end service arrangements, not merely to select among a limited number of choices provided by dominant carriers.

IDCMA agrees with the BOCs on an important factual conclusion expressed in the Petition -- that AT&T remains dominant in interexchange services -- although it does not believe that BOC entry into interexchange

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provide interexchange service at anticompetitive rate levels, set below actual costs, in their efforts to gain market share.

6/ See Petition for Reconsideration of the Independent Data Communications Manufacturers Ass'n, CC Docket No. 91-141 (filed Dec. 18, 1992); see also, e.g., Comments of Bell Atlantic, CC Docket No. 91-141, at 5 (filed Apr. 2, 1993); Comments of NYNEX, CC Docket No. 91-141, at 17 (filed Apr. 2, 1993); Comments of Pacific Bell and Nevada Bell, CC Docket No. 91-141, at 15-16 (filed Apr. 2, 1993); Comments of Southwestern Bell, CC Docket No. 91-141, at 16 (filed Apr. 2, 1993).

services is an appropriate remedy for this condition.<sup>7</sup> Whatever the effect on competition within the national interexchange market, the addition of regional monopolists to this market, without greater local exchange competition and effective regulatory safeguards, would only exacerbate the problems of anticompetitive conduct affecting adjacent markets, such as that for CPE. AT&T's continued market power in interexchange services and its involvement in a variety of unregulated communications-related activities, including CPE manufacturing, require that AT&T continue to be regulated to protect against anticompetitive conduct affecting unregulated markets, such as CPE bundling.

## **II. CONCLUSION**

The BOCs' anticompetitive posture with respect to issues involving CPE bundling and expanded interconnection does not augur well for their future conduct if they are permitted to provide interexchange services. Safeguards, in the form of concrete requirements and enforcement mechanisms, will be necessary to ensure against the opportunities for anticompetitive conduct such entry would provide.

First, the Commission's approach to the key safeguards should look both to the past and to the future. CPE deregulation and competition are the single most undiluted successes among the regulatory initiatives by the Commission in common carrier matters since the beginning of interexchange competition in the 1970s. The CPE unbundling rule, which is the cornerstone of this continued success, should be reaffirmed as a critical element of the regulations governing BOC provision of exchange access, interexchange, and "end-to-end" service offerings.

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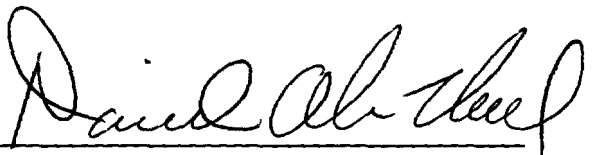
<sup>7/</sup> See Petition at 11.

Second, future regulatory initiatives should build on this success to "open up" competition among a variety of user-designed arrangements of regulated and unregulated products and services. Meaningful end-user collocation is therefore an important element in any new regulatory environment and would spur competition in the local exchange market, thus helping to shape the necessary conditions for BOC entry into interexchange services. An overall strengthening of competitive safeguards, such as that provided by structural separation, should also be part of the Commission's approach.

Although a rulemaking such as that requested by the Petition is not warranted at this time, if the Commission proceeds with such an initiative, then it should include requirements for CPE unbundling and end-user collocation as elements of this rulemaking.

Respectfully submitted,

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September 2, 1993

CERTIFICATE OF SERVICE

I, Carolyn Pratt, hereby certify that copies of the foregoing Comments of the Independent Data Communications Manufacturers Association, Inc. were served by hand or by First-Class United States mail, postage prepaid, upon the parties on the attached list, this 2nd day of September, 1993.

  
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